

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MICHAEL SMITH)	Case No. 1:03CV1963
)	
Petitioner,)	
)	
vs.)	Judge Ann Aldrich
)	
NORMAN ROSE, Warden,)	Magistrate Judge James S. Gallas
)	
Respondent.)	
)	<u>ORDER</u>

On December 9, 2005, the court issued its order adopting the report and recommendation of Magistrate Judge Gallas, and denying petitioner Michael Smith's request for habeas corpus relief (Docket No. 13). Now before the court is Smith's motion to stay the portion of that judgment holding that an appeal could not be taken from the court's ruling in good faith, and denying a certificate of appealability ("COA")(Docket No. 14).

Smith seeks a more specific analysis of the merits of his claims under *Slack v. McDaniel*, 529 U.S. 473 (2000). In *Slack*, the Supreme Court held as follows:

When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Id. at 484. While the court's previous order did not recite this standard, it did contain the court's rulings that Smith had failed to present a credible argument excusing his procedural violations, and that his petition did not state a valid claim of the denial of a constitutional right.

And while Smith now contends that review of the COA issue should not have proceeded

until a later stage, Smith has not presented any subsequent argument or evidence that would contravene the court's ruling, or allow "jurists of reason" to debate the applicability of a procedural bar. As the Court noted in *Slack*, when a plain procedural bar is present and the district court is correct to invoke it to dispose of the matter, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petition should be allowed to proceed. In such a case, no appeal is warranted. *Id.* at 484-85.

For the foregoing reasons, the court denies Smith's motion to stay the judgment and reaffirms its holding denying a certificate of appealability on each of the issues raised by Smith's petition.

IT IS SO ORDERED.

/s/ Ann Aldrich
ANN ALDRICH
UNITED STATES DISTRICT JUDGE

Dated: June 30, 2006